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Paper No. 14

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SEP 10 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of:

MIHURA, BRUCE

Application No. 09/134,799

Filed: August 14, 1998

For: MUSIC SYSTEM

:
: DECISION
: ON PETITION
:
:

This is a decision on the facsimile communication received September 23, 2002. The communication is being treated as a petition to withdraw the holding of abandonment under MPEP 711.03(c)(II) and pursuant to 37 CFR § 1.181(a). No fee is required.

The application is abandoned for failure to timely file a proper reply to the non-final Office action mailed May 7, 2001. A Notice of Abandonment was mailed September 19, 2002.

Petitioner alleges that the non-final Office action was not received.

Based on M.P.E.P. § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include:

(a) a statement from the practitioner stating that the Office communication was not received by the practitioner;

(b) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and

(c) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

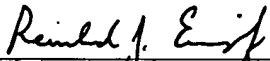
A review of the record indicates that the non-final Office action was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the non-final Office action on the part of the Patent and Trademark Office.

Petitioner fails to meet requirements (a) and (b) above. It is noted that the address of the petition is not the address of record and no change of address can be found in the file. Additionally, there is no statement that "a search of the file jacket and docket records" was made.

Accordingly, the petition is **DENIED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mailing date of this decision. Extensions of time under 37 CFR 1.136(a) are not permitted. The reconsideration request should a cover letter entitled "Renewed Petition to Withdraw the Holding of Abandonment." This is not a final agency action within the meaning of 5 USC 704.

A courtesy copy of this decision is being sent to the address provided on the communication of September 23, 2002. However, all future communications will be sent to the correspondence address above until such a time as a proper request for change of correspondence address is filed. Furthermore, Jeffery C. Hood (Reg. No. 35,198) is not of record in this application and cannot effect an address change. It appears he was never appointed power of attorney by applicant. Applicant may wish to consider filing a proper Power of Attorney.


Reinhard J. Eisenzopf, Director (Acting)
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